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VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: *Petition for Declaratory Ruling Regarding Zevo-3*, MB Docket No. 10-190,  
Notice of *Ex Parte* Presentation

*Sponsorship Identification Rules and Embedded Advertising*,  
MB Docket No. 08-90, Notice of *Ex Parte* Presentation

Dear Ms. Dortch:

On February 4, 2011, Susan Linn, Director of the Campaign for a Commercial-Free Childhood ("CCFC"), together with CCFC's counsel, Angela Campbell and Guilherme Roschke, and Georgetown Law student Khaliah Barnes, of the Institute for Public Representation ("IPR"), met with the following members of the Media Bureau: Mary Beth Murphy, Kim Matthews, David Konczal, Holly Saurer, and Van Bloys, Susan Aaron from the Office of General Counsel, and Jordan Usdan.

CCFC stressed that the Commission cannot rely solely on MTV Networks' bare assertion that *Zevo-3* is not a commercial because MTV Networks pays Skechers a "standard industry license fee" for each episode of *Zevo-3*. See Jared S. Sher, Counsel to Viacom and MTV Networks, January 6, 2011, Notice of Ex Parte Communication MB Docket No. 10-190, page 3. Whether *Zevo-3* is an advertisement under 47 CFR §76.225 n. 1 turns in part on whether the time was sold. This is a factual question. Thus, to rule on CCFC's request for a declaratory ruling, the Commission needs to determine the underlying facts. It may not simply rely on MTV Networks' self-serving and unverifiable claim.

CCFC thus asked the FCC to request that MTV Networks and Sketchers submit copies of all contracts and other agreements, whether written or oral, concerning the terms under which *Zevo-3* is being shown on Nicktoons. In addition, MTV Networks and Sketchers should submit

sufficient information to substantiate MTV Networks' claim that it pays Skechers a "standard industry license fee." CCFC agreed that this information should be kept confidential and informed the Commission that the appropriate representatives of CCFC were willing to sign a protective order to that effect so as to be able to review the submissions.

CCFC underscored its argument that, even if the Commission determined after reviewing the *Zevo-3* programming contract(s) that Skechers did not provide consideration for airing the program, *Zevo-3* would still violate existing Commission policies requiring the clear separation of commercial and program content. There is no separation between the characters and the shoes they promote. Indeed, the spokes-characters of *Zevo-3* share the same names and many of the same attributes of the shoes. The repeated use of the names constitutes a product placement. Moreover, if the program were not effectively an advertisement, CCFC doubts that the advertising trade associations would have felt it necessary to oppose CCFC's request.

CCFC reiterated it was only requesting that the FCC issue a declaratory ruling concerning this particular children's program and that such a ruling would not affect other existing children's programming that feature toys or are based on movies, books or video games. Nor would such a ruling violate Nicktoons' First Amendment rights. *Zevo-3*'s mixture of program content and commercial material is unfair and deceptive to children, and therefore would not receive First Amendment protection under the commercial speech doctrine. While CCFC would welcome the Commission reexamining its rules protecting children from over-commercialization, such a review is unnecessary for the Commission to find that *Zevo-3* is in violation of its current laws and policies.

In conclusion, CCFC urged the Commission to act quickly regarding this matter because its inaction could embolden fast food restaurants, cereal companies and other companies with popular spokes-characters to create children's programs based on their characters. CCFC also urged the Commission to amend its rules in Docket 08-90 to make explicit its understanding the embedded advertisings, such as that in *Zevo-3*, would run afoul of the separations policy.

Respectfully submitted,

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cc (via email) : Mary Beth Murphy  
Kim Matthews  
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Holly Saurer  
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